

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA  
Civ. No.

|                           |   |                         |
|---------------------------|---|-------------------------|
| UNITED STATES OF AMERICA, | ) |                         |
|                           | ) |                         |
| Plaintiff,                | ) | COMPLAINT OF THE UNITED |
|                           | ) | STATES FOR DECLARATORY  |
| v.                        | ) | AND INJUNCTIVE RELIEF   |
|                           | ) |                         |
| VIRGIL T. FALLON, dba     | ) |                         |
| VTF PROPERTIES,           | ) |                         |
|                           | ) |                         |
| Defendant.                | ) |                         |

Plaintiff United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA") and the United States Department of Housing and Urban Development ("HUD"), through its undersigned counsel, alleges as follows:

**PRELIMINARY STATEMENT**

1. This is a civil action for declaratory and injunctive relief brought against Virgil T. Fallon, dba VTF Properties ("Defendant"), for violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Lead Hazard Reduction Act"), 42 U.S.C. §§ 4851-4856.

2. The Lead Hazard Reduction Act is intended to, among other things, protect tenants (particularly children under the age of six) from lead poisoning by requiring the owners and managing agents of residential rental units to warn tenants about any known presence of lead-based paint and lead-based paint hazards and to provide prospective tenants with certain information about how to protect themselves and their families against the dangers of lead poisoning. Defendant violated the

Lead Hazard Reduction Act by failing to make the required disclosures, thereby denying tenants residing in the subject properties described below the opportunity to take steps to protect themselves and their families from lead poisoning.

3. Section 1018(b)(5) of the Lead Hazard Reduction Act, 42 U.S.C. § 4852d(b)(5), states that it is a violation of Section 409 of the Toxic Substances Control Act ("TSCA"), 42 U.S.C. § 2689, to fail to comply with a rule issued under 42 U.S.C. § 4852d.

4. By this action, the United States seeks to enjoin Defendant from further violations of the Lead Hazard Reduction Act.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. §§ 1331, 1345 & 1367(a); 42 U.S.C. § 4852d(b)(2) & (5); and 15 U.S.C. § 2616.

6. Venue is proper in the District of Minnesota pursuant to 28 U.S.C. § 1391(b) & (c), because the lawsuit involves actions that took place, and the subject properties are located, in the District of Minnesota.

#### **PARTIES**

7. Plaintiff is the United States of America.

8. Defendant is a resident of the District of Minnesota who owns and manages residential rental units in buildings located in the District of Minnesota.

#### **GENERAL ALLEGATIONS**

##### **A. Applicable Laws and Regulations**

9. In 1992, Congress enacted the Lead Hazard Reduction Act.

10. The purpose of the Lead Hazard Reduction Act is, among other things, (A) "to encourage effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction"; (B) "to ensure that the existence of lead-based paint hazards are taken into account in the . . . sale, rental, and renovation of homes and apartments"; and (C) "to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards." 42 U.S.C. § 4851a.

11. The Lead Hazard Reduction Act and its implementing regulations, found at 24 C.F.R. Pt. 35, Sbpt. A, and 40 C.F.R. Pt. 745, Sbpt. F, require lessors of residential properties subject to the Lead Hazard Reduction Act to provide certain information to tenants when a new lease is entered into or, if the lease predates the effective date of the Lead Hazard Reduction Act, at the first change to the terms of an existing lease after the effective date of the Lead Hazard Reduction Act, such as a rent increase. See 24 C.F.R. §§ 35.88 & 35.92; 40 C.F.R. §§ 745.107 & 745.113.

12. Lessors are required to disclose or provide to each tenant, among other things, the following information:

- a. Any known information concerning lead-based paint and lead-based paint hazards;
- b. Any records or reports available to the lessors pertaining to lead-based paint and lead-based paint hazards; and
- c. A lead hazard information pamphlet approved by U.S. EPA.

13. Lessors are also required to include in each contract for a lease or as an attachment to the lease, among other things:

- a. A Lead Warning Statement containing specific language as set forth in the regulations;
- b. A statement disclosing the presence of known lead-based paint and lead-based paint hazards or a statement that there is no knowledge of such information;
- c. A list of any records or reports pertaining to lead-based paint and lead-based paint hazards that have been provided to the lessee or a statement that there are no such reports;
- d. A statement by the tenant affirming receipt of the information set out in paragraphs 11 and 12, above; and
- e. The signatures of the lessors and agents certifying to the accuracy and completeness of their required disclosures, and signatures of the lessees attesting to their receipt of the required disclosures, along with the dates of all parties' signatures.

14. Section 1018(b)(5) of the Lead Hazard Reduction Act, 42 U.S.C. § 4852d(b)(5), states that it is a violation of Section 409 of the Toxic Substances Control Act ("TSCA"), 42 U.S.C. § 2689, to fail to comply with a rule issued under 42 U.S.C. § 4852d.

15. TSCA Section 17(a), 15 U.S.C. § 2616(a), provides this Court with jurisdiction over civil actions to restrain any violation of section 2614 or 2689.

#### **B. The Violations**

16. Defendant is a "person" within the meaning of the Lead Hazard Reduction Act and a "lessor" within the meaning of 24 C.F.R. § 35.86 and 40 C.F.R. § 745.103.

17. Defendant owns and manages eleven residential properties in the District of Minnesota with approximately 124

residential rental units that are subject to the Lead Hazard Reduction Act.

18. Regarding its 124 residential rental units that are subject to the Lead Hazard Reduction Act, Defendant has failed to make one or more of the disclosures required by the Lead Hazard Reduction Act or complete one or more of the disclosure activities required by the Lead Hazard Reduction Act.

19. The acts or omissions referenced in Paragraph 18 of this Complaint constitute violations of the Lead Hazard Reduction Act and its implementing regulations. As a result of such violations, Defendant has denied tenants residing in the residential properties the opportunity to take steps to protect themselves and their families from lead poisoning.

#### **CLAIM FOR RELIEF**

20. Section 1018 of the Lead Hazard Reduction Act, 42 U.S.C. § 4852d, and the applicable regulations found at 24 C.F.R. Pt. 35, Sbpt. A, and 40 C.F.R. Pt. 745, Sbpt. F impose upon Defendant the requirements identified in Paragraphs 11 through 13 of this Complaint.

21. Defendant has violated the Lead Hazard Reduction Act by failing to make required disclosures or complete the required disclosure activities to tenants leasing residential properties subject to the Lead Hazard Reduction Act. Under Section 1018(b)(2) of the Lead Hazard Reduction Act, 42 U.S.C. § 4852d(b)(2), and Section 15 of TSCA, 15 U.S.C. § 2616, because Defendant failed to comply with the Lead Hazard Reduction Act, Defendant may have endangered the health, welfare, or safety of the occupants of these premises.

Therefore, the United States may seek injunctive relief from Defendant.

**PRAYER FOR RELIEF**

WHEREFORE, the United States prays that this Court:

1. Issue a declaratory judgment finding that Defendant failed to comply with the Lead Hazard Reduction Act;
2. Issue an order requiring that Defendant comply with the Lead Hazard Reduction Act;
3. Require Defendant to take appropriate measures to rectify past violations of the Lead Hazard Reduction Act; and
4. Provide for any and all other relief that this Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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